IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

TUESDAY, THE 5TH JUNE 2007 / 15TH JYAISHTA 1929

W.A.No.370 of 2005(B)

AGAINST THE JUDGEMENT IN O.P.NO.17204/1994 DATED 27/01/2004

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APPELLANTS: RESPONDENTS 1 TO 3 IN THE ORIGINAL PETITION:-

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1. EMPLOYEES STATE INSURANCE CORPORATION,
   REPRESENTED BY ITS DIRECTOR GENERAL,
   E.S.I. CORPORATION, NEW DELHI.

2. THE REGIONAL DIRECTOR, REGIONAL OFFICE,
   E.S.I. CORPORATION, PANCHADEEP BHAVAN, THRISSUR-20.

3. THE RECOVERY OFFICER, E.S.I. CORPORATION,
   PANCHADEEP BHAVAN, THRISSUR-20.

BY STANDING COUNSEL SRI.T.P.M.IBRAHIM KHAN.

RESPONDENTS: PETITIONER & 4TH RESPONDENT IN THE O.P:-

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1. M/S. BAGSVIG VYTTILA, COCHIN-19,
   REPRESENTED BY ITS MANAGING DIRECTOR MR.C.R.VIRAN,
   M/S. BAGSVIG, VYTTILA, COCHIN-19.

2. UNION OF INDIA.

R1 BY ADV. SRI.ABRAHAM JOHN
R2 BY ADDL.C.G.S.C. SRI.C.A.MAJEED.

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 05/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:-

H.L.Dattu,C.J. & K.T.Sankaran,J.

W.A.No.370 of 2005

Dated, this the 5th day of June, 2007

JUDGMENT

K.T.Sankaran,J.

In view of the decision of the Supreme Court reported in *Employees State Insurance Corporation* v. *Santhakumar* [2007 (1) KLT 133 (SC)], the contention that the proceedings are barred by limitation would not survive. The decision of the Full Bench of this Court in *E.S.I. Corporation* v. *Excel Glasses Ltd*. [2003 (3) KLT 42 (FB)] is no longer good law in view of the Supreme Court decision. Therefore, the Writ Appeal is liable to be allowed on that ground and the writ petition is liable to be dismissed.

2. The learned counsel for the 1st respondent submits that the writ petitioner had challenged the *vires* of Regulation 31C of the Employees' State Insurance (General) Regulations, 1950 and the learned Single Judge has not decided that point and confined the decision to the question of limitation. Now having held that the proceedings are not barred by limitation in view of the decision of the Supreme Court, the question whether Regulation 31C is *ultra vires* or not assumes importance and it is relevant for decision. At this distance of time, we do not think, the writ petitioner should be allowed to proceed with the writ petition for the said relief.

Accordingly, the Writ Appeal is allowed and the impugned judgment is set aside. Liberty is reserved to the 1st respondent-writ petitioner, if he so desires, to challenge Regulation 31C in appropriate proceedings.

H.L.Dattu
Chief Justice

K.T.Sankaran
Judge

vku/-